

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY LOGUE KNOX,

Petitioner,

v.

KENNETH QUINN,

Respondent.

Case No. C07-5330RJB

ORDER ADOPTING
REPORT AND
RECOMMENDATION
AND DENYING
CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom (Dkt. 25) and Petitioner's Motion for Certificate of Appealability (Dkt. 26). The Court has considered the Report and Recommendation (Dkt. 25), the Motion for Certificate of Appealability (Dkt. 26), and the remainder of the file herein.

On March 31, 2008, Judge Strombom filed a Report and Recommendation, recommending dismissal of the Petition here because the first and second claims are time barred, the remaining claims are unexhausted, and Petitioner is now procedurally barred from raising the unexhausted claims in state court. Dkt. 25. Petitioner does not file objections to the Report and Recommendation, but files a Motion for Certificate of Appealability. Dkt. 26.

The Report and Recommendation (Dkt. 25) should be adopted and the Petition dismissed with prejudice. Petitioner has failed to show that his claims were timely and properly exhausted.

Petitioner's Motion for a Certificate of Appealability (Dkt. 26) should be denied. Pursuant to 28


1 U.S.C. § 2253(c)(3), the district court should grant an application for a Certificate of Appealability only if
2 the petitioner makes a “substantial showing of the denial of a constitutional right.” To obtain a Certificate
3 of Appealability under 28 U.S.C. § 2253 (c), a habeas petitioner must make a showing that reasonable
4 jurists could debate whether, or agree that, the petition should have been resolved in a different manner or
5 that the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*,
6 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the
7 court denies a claim on procedural grounds, the petitioner must show that jurists of reason would find it
8 debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of
9 reason would find it debatable whether the district court was correct in its procedural ruling. *Slack* at
10 1604.

11 The Report and Recommendation, adopted here, recommends dismissed the petition as time barred
12 and unexhausted, and so the matter was dismissed on procedural grounds. There is nothing in the record
13 that would support a conclusion that a jurist of reason would find it debatable whether the petition states a
14 valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether
15 this court was correct in its procedural ruling. *Slack* at 1604. The Certificate of Appealability should be
16 denied.

17 Therefore, it is **ORDERED** that:

- 18 • The Report and Recommendation (Dkt. 25) is **ADOPTED**;
- 19 • The Petition is **DISMISSED WITH PREJUDICE**;
- 20 • The Motion for a Certificate of Appealability (Dkt. 26) is **DENIED**, and
- 21 • The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
22 party appearing *pro se* at said party’s last known address.

23 Dated this 28th day of April, 2008.

24 
25 Robert J. Bryan
26 United States District Judge
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